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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,106	06/24/2003	Michael Howard West		9926

7590 10/06/2004

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EXAMINER

CLARDY, S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,106

Applicant(s)

WEST, MICHAEL HOWARD

Examiner

S. Mark Clardy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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Claims 1-5 are pending in this application.

Applicant's claims are drawn to pest control compositions comprising:

- a) boric acid (0.05 – 75%)
- b) dispersant (0.05 – 75%)
- c) organic pesticide (0.01 – 25%)

claims 2-3: chlorothalonil, propiconazole

The dispersant is an aqueous combination of a metal salt (Al, Co, Fe, Mn, Ni, Ag, Zr) and fatty amine. In claim 4, the metal salt is aluminum nitrate; in claim 5, the fatty amine is dimethylcocoamine.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In part (b) of claim 1, the recited metals are described as salts. The claim should be amended to read "...group consisting of salts of aluminum ...".

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Schubert et al (US 5,612,094), Joseph et al (US 5,468,715), Tvedten (US 6,663,860), and McConnell (US 4,132,780).

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Schubert et al teach compositions for preserving wood products comprising zirconium salts and boron containing components such as boric acid (col 2, lines 39-62) which are useful for preventing fungal attack.

Joseph et al teach blended fungicidal compositions comprising known fungicidal agents such as propiconazole or chlorothalonil, among others (col 3, lines 25-46), and surfactants such as cetyltrimethylammonium bromide or condensation products of ethylene oxide with fatty alcohols or amines (col 4, lines 1-8). The discussed prior art also discloses fungicidal compositions comprising boric acid (col 1, lines 65-67).

Tvedten teaches biological pesticides comprising detergents and detergent builders such as sodium borate (col 3, lines 59-63), other additives such as borax (col 5, lines 35-37), and aluminum compounds such as aluminum nitrate (col 5, lines 49-61)

McConnell teaches compositions for the control of fungi and nematodes comprising azides and metal salts including salts of aluminum, cobalt, iron, manganese, nickel, and zirconium (columns 2-4).

One of ordinary skill in the art would be motivated to combine these references because they disclose various active agents which are useful in fungicidal compositions.

Thus, it would have been *prima facie* obvious to the ordinary artisan at the time the invention was made to have combined applicant's boric acid, dispersant (metal salt and fatty amine), and organic pesticide in a fungicidal composition because the prior art teaches that each of these components was known to have utility in fungicidal compositions. It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose;

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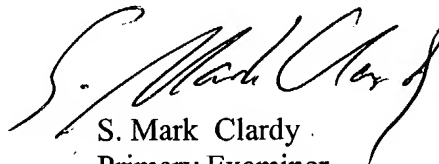
the idea of combining them flows logically from their having been individually taught in the prior art. In re Kerkhoven, 205 USPQ 1069. Applicant is seen as having combined agents with known utility in fungicidal compositions to make a fungicidal composition.

No unobvious or unexpected results are noted; no claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



S. Mark Clardy
Primary Examiner
Art Unit 1616

September 29, 2004